

initial burden is on an Examiner to set forth evidence and rationale supporting a position that an Applicant has failed to meet any of these requirements. (MPEP §§ 2163.04, 2164.04, & 2165.03.) In the present case, this initial burden has not been met to shift the burden of response to the Applicants because the Office Action fails to point out any insufficiency of the specification with respect to the three requirements of §112, first paragraph.

II. Rejection Based on the Specification

Claims 1-26 were rejected under 35 U.S.C. § 103(a) as obvious in view of the specification of the present application. Applicants respectfully traverse this rejection on the basis that a *prima facie* case of obviousness necessary to shift the burden to Applicants has not been established.

As an initial matter, the Office Action states with respect to claim 1 that the Background section of the present Application "implies that such products, as those recited, have been previously made." (Office Action mailed Dec. 19, 2001 at page 4, line 13.) Although this does not appear to be the basis for the obviousness rejection, Applicants nevertheless respectfully traverse this conclusion. To the contrary, the Application fails to provide any basis for an implication that any prior art product meets all of the recitations of claim 1.

Also with respect to claim 1, the Office Action appears to set forth the position that it is obvious to substitute a radiation-curable varnish for a water- or solvent-based overprint varnish of a food packaging film. However, this position ignores the teaching away in the Background section, which states that radiation-curable systems have *not* found acceptance for use with relatively thin thermoplastic films in food-packaging applications because of the susceptibility of such systems to unacceptable levels of migration of unreacted monomers and reaction by-products (e.g., greater than 50 ppb) into the packaged food. (Application, page 3, line 28 to page 4, line 2.)

Further, even if the substitution proposed in the Office Action were made, the proposed combination fails to teach or suggest *all* of the claim recitations – and therefore fails to establish a *prima facie* case of obviousness. (See MPEP §2143.03.) For example, the proposed

combination fails to teach or suggest a radiation-cured varnish where "no more than 50 parts per billion total of any of the polymerizable reactants" of the varnish migrate when tested according to the recited test protocol, as recited in claim 1. Further, the proposed combination fails to teach or suggest a radiation-cured varnish having polymerized "at least 90 weight % of the one or more polymerizable reactants," also as recited in claim 1.

A *prima facie* case of obviousness also requires that the prior art provide a reasonable expectation that the proposed modification will succeed. (MPEP §2142.) The reasonable expectation of success must *not* be based on applicant's disclosure. (*Id.*) In the present case, the Office Action fails to point out any rationale supporting that the proposed modification would reasonably be expected to succeed in providing a film for which no more than 50 ppb of the polymerizable components of the varnish migrate under the recited test. Although the Office Action states that the present invention would have been obvious "once it is known to determine which conventional materials are or are not susceptible to migration" (Office Action mailed Dec. 19, 2001 at page 4, lines 15-16), the Office Action fails to provide any basis (other than the Applicants' disclosure) for a reasonable expectation that it would have been at all possible to obtain the migration characteristics recited in claim 1.

With respect to independent claims 18 and 22, the proposed combination in the Office Action fails to teach or suggest *all* of the claim recitations – and therefore fails to establish a *prima facie* case of obviousness. For example, the proposed combination fails to teach or suggest:

the weight of the radiation-cured varnish per unit area of substrate film in the portion of the radiation-cured varnish extending into the heat-sealed region is at least substantially equal to the weight of radiation-cured varnish per unit area of substrate film outside of the heat-sealed region

as recited in independent claim 18, and also fails to teach or suggest:

exposing the radiation-curable varnish to an electron-beam radiation source having an energy of less than about 100 keV in an

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amount sufficient to polymerize at least 90 weight % of the
polymerizable reactants
as recited in independent claim 22.

The dependent claims include additional recitations and are therefore further
patentable over the proposed combination.

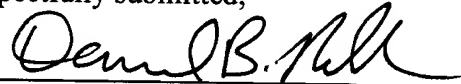
III. Conclusion

In view of the above remarks, it is respectfully submitted that the present
application is in condition for allowance. A notice to that effect is earnestly and respectfully
requested.

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ATTACHMENT

Version with Markings to Show Changes Made

In the Claims:

Claim 1 has been amended as follows:

1. (Amended) A packaged food product comprising:

a food product;

a package enclosing the food product, the package comprising a coated, printed film comprising:

a substrate film comprising one or more thermoplastic materials, the substrate film having a print side and an opposing food side and an average thickness of less than about 15 mils;

an image printed on the print side of the substrate film;

a radiation-cured varnish over the printed image, the radiation-cured varnish formed by:

coating the printed image with a radiation-curable varnish comprising one or more polymerizable reactants and optionally one or more photoinitiators; and

subsequently exposing the radiation-curable varnish to radiation sufficient to polymerize at least 90 weight % of the one or more polymerizable reactants;

wherein when the coated, printed film is tested according to the FDA migration test protocol, no more than 50 parts per billion total of any of the polymerizable reactants and the optional photoinitiators migrate within 10 days at 40°C from the coated, printed film into a food simulant selected from the group consisting of i) 95 weight % ethanol and 5 weight % water and ii) 5 weight % ethanol and 95 weight % water, the food simulant enclosed within a test container formed from the coated, printed film so that the food simulant contacts the food side of the

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substrate film and the ratio of volume of food simulant to surface area of coated, printed film is 10 milliliters per square inch.